

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 14 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0272
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RICHARD CURTIS LYNN, JR.,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084470

Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

Isabel G. Garcia, Pima County Legal Defender
By Scott A. Martin

Tucson
Attorneys for Appellant

K E L L Y, Judge.

¶1 Following a jury trial, Richard Curtis Lynn, Jr. was convicted of second-degree burglary. He admitted he had one historical prior felony conviction, and the trial court sentenced him to an enhanced, presumptive prison term of 6.5 years. Lynn appealed, and counsel has filed a brief in compliance with *Anders v. California*, 386 U.S.

738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (1999), avowing he has “reviewed the entire record but has found no tenable issue to raise on appeal.” Counsel noted specifically that he had considered whether the trial court had erred by denying Lynn’s motion for judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P. Counsel asks this court to “review the record for any potential error appellate counsel may have missed.” Lynn has not filed a supplemental brief.

¶2 Pursuant to our obligation under *Anders*, we have reviewed the entire record and have found no error warranting reversal. Viewed in the light most favorable to sustaining the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 98 P.2d 914, 914 (App. 1999), the evidence established that Lynn’s sister, Josie, had permission to stay at the victim’s apartment while the victim was in Phoenix. She also had at least implied permission to invite others to visit at the apartment. The victim had met Lynn previously and testified he would not have objected to Lynn staying at the apartment with Josie for a couple of days. He had not, however, given Josie permission to take any of his belongings from the apartment. When the victim returned from Phoenix he found Lynn carrying his television out of the apartment and loading it into a car parked outside; Josie was not present. He asked Lynn to “please just put the T.V. back and I won’t have to call the cops,” but Lynn refused.

¶3 “A person commits burglary in the second degree by entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein.” A.R.S. § 13-1507(A). Entering or remaining unlawfully is statutorily defined as “an act of a person who enters or remains on premises when the person’s

intent for so entering or remaining is not licensed, authorized or otherwise privileged.” A.R.S. § 13-1501(2). And as counsel acknowledges, this court has previously held that even if “a person enters another’s premises lawfully and with consent, his presence can become unauthorized, unlicensed, or unprivileged if he remains there with the intent to commit a felony.” *State v. Altamirano*, 166 Ariz. 432, 435, 805 P.2d 425, 428 (App. 1990). Sufficient evidence supported the jury’s verdict, and the sentence the court imposed was within the statutory range established for the offense. Thus, we affirm Lynn’s conviction and sentence.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge